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WEST JERSEY RAILROAD CO. *v.* CAMDEN, G. & W. RAILWAY CO.[1]

COURT OF CHANCERY OF NEW JERSEY.

A street railway, constructed in a highway under authority of law, with a road-bed which will admit of the free use of the highway by all other lawful means, operated by cars patterned after the style and size of cars ordinarily in use by horse railways, the motive power of which is electricity, supplied by means of overhead wires supported by poles planted in the sidewalks immediately within the curbs, is but a modification of the public use to which the highway was originally devoted, and is not an additional burden on the land, for which compensation may be required.

Equity will not enjoin an unauthorized obstruction in a public highway at the instance of a private person, corporate or natural, who does not suffer some special damage from it differing in kind from the damage which such person sustains merely as a member of the community; and, within this rule, a railroad company, though it does public service, stands substantially upon the footing of a private individual.

Such special damage is not suffered by a steam railway company which has merely the right to operate its road across the highway at grade, through the establishment in the highway of a street railway, the motive power of which is electricity, supplied by means of wires elevated a sufficient height to admit the free passage of the cars of the steam road thereunder.

ELECTRIC RAILROADS UPON PUBLIC HIGHWAYS.

In the desire to facilitate the introduction of improved means of transit by cars running upon the public streets and roads, the rights of the general public, of land-owners, and of the proprietors of other methods of transportation, have not,

[1] Reported in 29 Atl. Rep. 423.

perhaps, always been duly considered by legislative bodies, and it is to the judiciary that the aggrieved parties have looked, and must look for protection and redress.

The rapidly spreading network of poles and wires over the suburban and outlying districts of the great cities, indicates very plainly that, in its local passenger traffic, at least, the steam railroad is finding a dangerous rival.

The "trolley" system has the advantages of cheapness and convenience; it runs upon the public highways, and is not compelled to purchase its right of way; it has obtained a footing as a street railway, with the attendant advantages, while in the rapid course of invention, it bids fair to subserve many of the uses of a steam railway; and, a consummation to be deprecated—we may find in a few years that the camel has thrust his whole body into the hut—that the highways, so carefully guarded against the encroachments of steam railroads, are monopolized by the electric railroad, and that, without any compensation. These considerations make it interesting and important to ascertain, if possible, the present current of judicial opinion.

The decision in the principal case is re-enforced by two others, also decided during the past year, and upon almost identical facts: *Morris & E. Railroad Co. et al.* v. *Newark Pass. Ry. Co.*, 29 Atl. 184 (N. J.); *Chicago & C. Terminal Ry. Co.* 38 N. E. 604 (Indiana).

The basis of these decisions is, that the right of way acquired by a steam railroad company is impliedly subject to the easement of the public in the street; in other words, that the authority of the railroad to invade the highway is limited to its necessity in crossing; and that, as the operation of a street railway (even by electricity), imposes no additional burden on the street, a street railway company which has acquired proper authority to build so as to cross the tracks of a steam railroad where they intersect a street, may construct its road across such tracks without compensation to the steam railroad company.

The first part of this proposition—that the public easement of passage along the highway is modified only so far as is

absolutely necessary for the purposes of the railroad in crossing—may be conceded—particularly where the railroad acquires its right of crossing only by implication: See *Lehigh Valley R. Co.* v. *Orange Water Co.*, 42 N. J. E. 205; *Raritan* v. *Port Reading R. Co.*, 49 N. J. E. 11.

Substantially the same principle was applied in a case recently decided in New York, where a telephone company, operating its lines upon a street by authority of law, sought to restrain the use of the trolley system upon a street railway, on the ground that the escaping current from the trolley wires seriously impaired the usefulness of the telephones: *Hudson River Telephone Co.* v. *Wateroliet Turnpike & Railway Co.*, 135 N. Y. 393 (1892).

The court there said: "The primary and dominant purpose of a street being for public passage, any appropriation of it by legislative authority to other objects will be deemed to be in subordination to this use, unless a contrary intent is clearly expressed. . . . As plaintiff had accepted its franchise, which authorizes it to construct and operate its lines upon streets and highways, upon the express condition that they shall not be so constructed as to incommode the public use, and, as defendant was occupying the streets in such a manner as to expedite public travel and promote the public use to which they were devoted, plaintiff's franchise was of a subordinate character, and it could not complain that the system adopted by defendant interfered with the operation of its lines."

The second part of the proposition, however, presents a different question.

Is it good law to say, without qualification, that a street railway operated by electricity is not an additional burden upon the land of the highway, for which abutting owners are entitled to compensation? The queries in the principal case suggest a necessity for some limitations upon the rule, viz.:

(1) "Whether there may not be methods of operating an electric railway resorted to which will be within the objection that it constitutes an additional servitude."

(2) "Whether serious injury to improvements which the

abutting land-owner may make upo and under sidewalks, by the planting of poles to support the overhead wires, will not be within like objection."

The authorities present, at first glance, little that is enlightening or reassuring to any but the street car companies. Yet, perhaps, a more careful reading would show some grounds for anticipating the adoption of a more satisfactory rule, at no very distant date.

When horse railways were first projected, and long after, it was a debatable question whether their tracks could be built upon the streets without compensation to abutting owners.

But it was finally established by a great preponderance of authority, that the horse railway was only a modification of the public use of the street, and imposed no additional burden on the land: *Brown* v. *Duplessis*, 14 La. Ann. 842 (1859); *Eliott* v. *Fair Haven & W. R. Co.*, 32 Conn. 579 (1860); *Cincinnati & S. G. Street Ry. Co.* v. *Cumminsville*, 14 Ohio St. 523 (1863); *Hinchman* v. *Paterson Horse R. Co.*, 17 N. J. Eq. 75 (1864); *Jersey City & B. R. Co.* v. *Jersey City & C. R. Co.*, 20 N. J. E. 66 (1869); *Hobart* v. *Milwaukee City R. Co.*, 27 Wisc. 194 (1870); *State* v. *Laverack*, 34 N. J. L. 201 (1870); *Peddicord* v. *Baltimore, &c., Pass. Ry. Co.*, 34 Md. 463 (1871); *Paterson Horse R. Co.* v. *Paterson*, 24 N. J. E. 158 (1873); *Grand Rapids R. Co.* v. *Heisel*, 28 Mich. 62 (1873); *Attorney-General* v. *Metropolitan R. Co.*, 125 Mass. 575 (1878); *Citizens' Coach Co.* v. *Camden Horse R. Co.*, 33 N. J. E. 267 (1880); *Eichels* v. *Evansville Street Ry. Co.*, 78 Md. 261 (1881); *Newell* v. *Minneapolis, L. & M. Ry. Co.*, 35 Minn. 112 (1886); S. C., 25 Amer. L. Reg. N. S. 431 and note; *Briggs* v. *Lewiston & Auburn Horse R. Co.*, 79 Me. 363 (1887); *Newark Pass. Ry. Co.* v. *Block*, 55 N. J. L. 605 (1893); S. C., 27 Atl. 1067.

The words of Magie, J., in *Citizens' Coach Co.* v. *Camden Horse R. Co.*, *supra*, are significant of the methods of reasoning which first permitted the street car rails to be laid:

"The cars are drawn by animals which usually draw the vehicles used on highways. They carry along the highway such passengers as otherwise would be obliged to pass over it

on foot or in vehicles, and do so with no more injury in the way of noise, jar or disturbance than would be occasioned by the passage of other vehicles:" See also Chancellor Green in *Hinchman* v. *Ry., supra.*

Had not the public grown accustomed to the use of the streets by horse cars for many years, would the electric cars have received so warm a welcome at the hands of the courts?

If, however, this rule as to horse railways is firmly established, the rule as to ordinary steam railroads is just as well established to the contrary. An ordinary traffic railroad, operating locomotives and trains of cars by steam, is undoubtedly an additional burden upon the highway, and may not be built without compensation to abutting land-owners: *Starr* v. *Camden & Atlantic R. Co.*, 4 Zabr. 592; *Hetfield* v. *Central R. Co.*, 5 Dutch, 571; *Hinchman* v. *Paterson Horse R. Co.*, 17 N. J. E. 75 (1864); *M. & E. R. Co.* v. *Prudden*, 19 N. J. E. 386 (1868); *Cox* v. *Louisville N. A. & C. R. Co.*, 48 Ind. 178 (1874); *Penn. S. V. R. Co.* v. *Walsh*, 124 Pa. 544 (1889); *Western Ry. of Alabama* v. *Alabama & G. T. R. Co.*, 11 So. 483 (Ala. 1892); *1 Redf. on Railways* (5th Ed.), 314, *et. seq.*

As was said in *Taggart* v. *Newport St. Ry. Co.*, 16 R. I. 668 (1890), 19 Atl. 326: "The distinction is often stated as a distinction between steam and horse railroads, but properly it depends not on the power that is used, but on the effect that is produced. A steam railroad is held to impose a new servitude, because, as ordinarily operated, it largely prevents the use of the street in the usual modes. . . . It is not the motor, but the kind of occupation, whether practically exclusive or not, which is the criterion. A steam railroad as ordinarily operated, dangerously interferes with the usual modes of travel and is a perpetual embarrassment to them, in greater or less degree, according as its business is greater or less; . . . whereas the ordinary street railway, instead of adding a new servitude to the street, operates in furtherance of its original uses, and, instead of being an embarrassment, relieves the pressure of local business and travel."

There have been cases holding that a steam railway on a street, operated so as to be compatible with the usual modes of

use, would not impose a new servitude: *Morris & E. R. Co.* v. *Newark*, 2 Stock, 352; *Taggart* v. *Ry.*, *supra*; *Newell* v. *Minneapolis Ry. Co.*, 35 Minn. 112; *Fulton* v. *Short Route Ry. Co.*, 85 Ky. 640.

In the early history of steam railroads, as remarked by Magie, J., in *Citizens' Coach Co.* v. *Camden Horse R. Co.*, *supra*: "With a limited and imperfect knowledge of the extent of development to which such roads were destined to attain, or with an exaggerated or distorted view of their character as public highways, it was long contended that such railroads might occupy the soil of ordinary public highways without making compensation to the land-owner. . . . It is now perfectly obvious that the use of a public highway longitudinally, by a railroad operated by steam, is a use entirely inconsistent with and destructive of the public use to which the highway was originally devoted."

The courts have been at great pains to define what distinguishes a street railway from an "ordinary railroad."

It seems to be well established that the criterion is neither the motive power, the character of the appliances, nor the location of the railroad.

In numerous cases, the kind of motive power employed has been held to be of no consequence. Thus, in *Williams* v. *City Electric Street Ry. Co.*, 41 Fed. 556 (Ark. 1890), it was held that steam-motors might be used in propelling street cars. See also *Briggs* v. *Lewiston & Auburn Horse R. Co.*, 79 Me. 363; *Taggart* v. *Newport St. Ry. Co. supra*; *Halsey* v. *Rapid Transit Street Ry. Co.*, 47 N. J. E. 380 (1890); *Buffalo R. & P. Ry. Co.* v. *Du Bois Traction Co.*, 24 Atl. 179 (Pa. 1892).

Finletter, P. J., in a recent case in Pennsylvania, remarked: "What is a railroad, and what is a street railway? . . . Before the establishment of street passenger railways, every one knew what a railroad was. . . . The street passenger railway followed the lines of the streets. It was designed or passengers alone, and received them at all points. It simply took the place of the lines of omnibuses. However a railroad may be now defined, it could not then be mistaken for a

street passenger railway. The character of a structure of any kind must depend upon the purpose it fulfils rather than upon its style of architecture. The method of construction or operation cannot qualify its purpose or character. A street passenger railway will be no less nor more than a street passenger railway, though it may use horse, electric or steam power or the cable. It would still be a street passenger railway if its tracks were sunk below or raised above grade:" *Potts* v. *Quaker City Elevated R. Co.*, 2 D. R. 200; 3 D. R. 172 (1894); *Commonwealth* v. *N. E. Elevated Ry. Co.*, 3 D. R. 104 (1893).

Furthermore, it has been recently held in Pennsylvania, that a "street railroad" need not even be upon a street, but may be upon a country road, the court saying that the phrase "street railways," in a general incorporation act, "was used to designate the character of the railway, and not its location; and that the word 'street' includes any highway, unless there is something to restrict its meaning:" *Penna. R. Co.* v. *Montgomery County Pass. R. Co.*, 3 D. R. 58 (1893).

What is it, then, which distinguishes the street railway? It is a railway, say the courts, which is exclusively for the transportation of passengers, not of goods; and which stops its cars at frequent intervals for the receipt of passengers: *Halsey* v. *Rapid Transit Co.*, *supra*; *Buffalo R. & P. R. Co.* v. *Du Bois Traction Co.*, *supra*; *Taggart* v. *Newport St. Ry. Co.*, *supra*; *Briggs* v. *Lewiston Ry.*, *supra*; *Potts* v. *Quaker City Elev. R. Co.*, *supra*; *Comm.* v. *N. E. Elevated Ry. Co.*, *supra*; *Penna. R. Co.* v. *Montgomery Co. R. Co.*, *supra*.

This, it is submitted, is rather a description than a definition. Suppose a horse car line undertook to carry small parcels, would that destroy its character as a street railway? And, how frequent must the stoppages for passengers be?

But, after all, is it necessary, even if possible, to draw the line, and say,—this is a street railway, this is not? And what is gained?

The cases of *Potts* v. *Railway* and *Commonwealth* v. *Railway*, *supra*, while they go upon the question whether an elevated railroad operated upon city streets is entitled to

incorporation under a general railroad act, yet show that a road, distinctly fulfilling the description laid down for a street railroad, may yet constitute an additional burthen upon the highway; for surely, nothing could have been farther from the mind of the court than to intimate that such elevated road could be built without compensation to abutting owners. See *Story* v. *N. Y. Elevated R. Co.*, 90 N. Y. 123 (1882); *American Bank Note Co.* v. *N. Y. Elevated R. Co.*, 129 N. Y. 252 (1891).

Even after it has been determined, then, that a given method of transportation is a "street railway," this does not necessarily dispose of the further question, is it an additional burthen upon the highway?

The doctrine that a horse railway constitutes no additional servitude having become firmly established, the courts seemed to find it an easy step to electric railroads.

Old charters and statutes authorizing the use of "horse power, steam or other means," were held to permit the use of the electric power, although no such method was known when the charter was granted or the statute enacted: *Hudson River Telephone Co.* v. *Wateroliet Turnpike Ry. Co.* 135 N. Y. 393 (1892); *Paterson Ry. Co.* v. *Grundy*, 26 Atl. 788 (1893); S. C., 51 N. J. E. 213; *Fox* v. *Catharine St. Ry. Co.*, 12 Pa. C. C. 180 (1892); *Lockhart* v. *Craig St. Ry. Co.*, 139 Pa. 419 (1891); *Taggart* v. *Newport St. Ry. Co.*, 16 R. I. 668 (1890). See *contra*, *People ex rel. Third Ave. R. Co.* v. *Newton*, 19 N. E. 831 (N. Y. 1889), where the substitution of the cable for horse power was held to impose a new servitude on the street.

It has even been questioned whether "the grant of a right to build a passenger railway . . . does not carry with it, at least, in the absence of specific limitations or prohibitions, the right, from time to time, to operate it by new methods and motive power, developed in the progress of invention and experience:" per Mitchell, J., in *Reeves* v. *Philadelphia Traction Co.*, 152 Pa. 153 (1893).

It is held in a unanimous array of decisions, that the electric railway is merely a new and improved method of exercis-

ing that public easement, long ago determined to be open to horse railways: *Detroit City Ry. Co.* v. *Mills*, 85 Mich. 634 (1891); *Halsey* v. *Ry. Co.*, 47 N. J. E. 380; *Koch* v. *North Avenue Ry. Co.*, 75 Md. 222 (1892); *Taggart* v. *Newport Ry. Co.*, 16 R. I. 668 (1890); *Buffalo C. & P. Ry. Co.* v. *Du Bois Traction Co.*, 24 Atl. 179 (Pa. 1892); *Green* v. *City & Suburban Ry. Co.*, 28 Atl. 626 (Md. 1894); *State* v. *Mayor*, 30 Atl. 531 (N. J. 1894); *State* v. *Board of Public Works*, 29 Atl. 149 (N. J. 1894); *Morris & E. R. Co.* v. *Newark Pass. Ry. Co.*, 29 Atl. 184 (N. J. 1894); *Chicago* v. *C. Terminal Ry. Co.*, 38 N. E. 604 (Ind. 1894).

At present, it seems to be established that the occupation of the streets by an electric railway using the "trolley" system is no more exclusive than if it were operated by horse power; and that "electricity, besides being as safe and as easily managed as horse power for the propulsion of street cars, is more quiet, more cleanly, and more convenient than horses, both for residents on the streets, and for the public generally, and also causes much less wear and injury to the streets and highways than is occasioned by street cars of which horses are the motive power."

And, although a court will take notice that electricity developed to some high degree of intensity, is exceedingly dangerous, and even fatally so, to men or animals, when brought in contact with them, it will not take notice that, as used in the trolley system, it is dangerous. Nor is the possible danger in frightening horses so great as to constitute an additional servitude: *Taggart* v. *Newport Street Ry. Co.*, 16 R. I. 668 (1890); 19 Atl. 326.

Apparently, then, for the mere location of the tracks of such a railway upon a street, and the running of cars thereon, there can be no claim for damages, as for an additional servitude upon the highway.

But the railroad must be properly constructed and maintained. "Those using electricity as a motive power on public highways must remember that they have not the exclusive right to the highway, and must respect the rights of others equally entitled to use it. . . . The company must so con-

struct its tracks and run its cars as not to unnecessarily interfere with the rights of others in the use of this public highway:" *Green* v. *City & Suburban R. Co.*, 28 Atl. 626 (Md. 1894); See *Koch, et al.* v. *North Ave. Ry. Co.*, 75 Md. 222 (1892).

A company "cannot lawfully construct and operate its road in a street too narrow to admit of the passage of cars and other vehicles at the same time, nor so construct it as to interfere with the rights of the general public in the street; nor in a street, though of sufficient width, if its condition be such that the operation of the railway will result in the practical exclusion of others from the use of the street: *Detroit City Ry. Co.* v. *Mills*, 85 Mich. 634 (1891).

When the public authorities have taken possession of a street or highway, and regularly defined the interests and improvements necessary for the use of the public by established grades, etc., lot-owners have the right to make their improvements in reference thereto, and no subsequent change, which obstructs or impairs access to such improvements, can be lawfully made without compensating for the injury. A finding of the court, that such injury will result from laying a street railway track near the sidewalk in front of the owner's house, is in no way qualified or affected by the further fact that when the interests of the company and of the general travelling public are also taken into the account, the location would be as little injurious as in any other part of the highway:" *Cincinnati & S. G. Street Ry. Co.* v. *Cumminsville*, 14 Ohio, 523 (1863).

Street cars propelled by electricity, and running along land burdened only with the easement of a public highway, cannot be run at a rate of speed incompatible with the lawful and customary use of the highway by others with reasonable safety.

"The plaintiff in error asserts that its cars, propelled by electricity, are capable of being run at greater speed than other vehicles in the highway, and that the public convenience demands, for passengers carried in such cars, what is called 'rapid transit,' and it draws the inference that its cars may, therefore, be run at such speed as will satisfy this public

demand, and that other persons lawfully using the highway in the customary modes must govern themselves and use the highway acordingly. . . . I am unable to subscribe to the notion, which, carried to its logical conclusion, would permit this company and other companies running cars in public highways, propelled by electricity, cables, etc., to run at any rate of speed which they may deem a demand, undefined and unrecognized by law, to require. . . . There is no just analogy between the right of a street railway running such cars longitudinally along the highway, and the right of a railroad company running its trains across the highway at grade. The latter acquires by condemnation a right to run its tracks over the lands covered by the highway, and so burdens it with an additional easement. . . . No grant for the acquisition and use of such additional easement has been made to the street railways, and in the absence of such grant no right to run cars at excessive rates of speed exists. Their only right in this respect is to run at such rate as will not interfere with the customary use of the highway by others of the public with safety:" Magie, J., in *Newark Passenger Ry. Co.* v. *Block*, 55 N. J. L. 605 (1893); 27 Atl. 1067.

The location and maintenance of the various appliances of the electric railway, its poles, wires, etc., raise another set of questions; first, what are the special rights of the abutting owners upon public streets; second, do these structures materially interfere with such rights.

It has been stated that the rights of the abutting owner are: (1) The right of access to and from, and over the land designated as a street; (2) The right to light, air and prospect from and over it: *Dill* v. *School Board*, 20 Atl. 739 (N. J. 1890); *Hobart* v. *Milwaukee City R. Co.*, 27 Wis. 194 (1870); *American Bank Note Co.* v. *N. Y. Elevated R. Co.*, 129 N. Y. 252 (1891).

"These are interests distinct from those possessed by the general public, and are rights appurtenant to the lot and the improvements thereon. . . . These he cannot be deprived of without compensation being made to him:" *Paterson Ry. Co.* v. *Grundy*, 26 Atl. 788 (1893); 51 N. J. E. 213.

"The abutting owner has not only the right of ingress and egress in the accustomed manner, but also to have the way of access to the upper stories of his house kept free from obstructions which will prevent its use in emergent cases, such as fire, or which cannot be quickly displaced without serious danger," for example, an electric wire: *Paterson Ry. Co.* v. *Grundy*, *supra*.

The owner of a store has no such right to use the street in front thereof by having drays and wagons with teams attached, stand transversely upon the street while discharging goods, as will entitle him to recover against a street railway company which has so constructed its track as to interfere with such use of the street: *Hobart* v. *Milwaukee City R. Co.*, *supra*.

Since the abutting owner is responsible for the maintenance of the sidewalk before his premises, he is allowed to exercise privileges there which he may not exercise elsewhere in the street, such as loading and unloading goods, mantaining vaults, chutes, etc.

And, on the other hand, the roadway having been devoted to passage by vehicles, may lawfully be applied to uses which would be unlawful if exercised upon the sidewalk, against the will of the abutting owner. For example, the erection of trolley poles in the middle of the street does not entitle the abutting owners to compensation, whatever might be the case if they were erected upon the sidewalk: *Halsey* v. *Rapid Transit Street Ry. Co.*, 47 N. J. E. 380 (1890).

The general rule seems to be that, "recognizing the right of the legislature and city authorities to authorize the building of railways upon the streets of a city, without compensation to property owners, the necessary and proper apparatus for moving them must be allowed to follow as an incident, unless there is something illegal in its construction and use:" *Lockhart* v. *Craig Street Ry. Co.*, 139 Pa. 419 (1891); *Fox, et al.* v. *Catharine Street Ry. Co.*, 12 Pa. C. C. 180 (1892).

And the poles and wires of the trolley system come within this description of necessary and proper apparatus: *Halsey* v. *Rapid Transit Ry.*, *supra*; *State* v. *Mayor, &c.*, 30 Atl. 531

(N. J. 1894); *Taggart* v. *Newport St. Ry. Co.*, *supra*. See *Fidelity Trust Co.* v. *Mobile Street Ry. Co.*, 53 Fed. 687 (1892).

So, stringing a single wire along a street, twenty feet above the surface, cannot be said to be any substantial interference with the *quasi* easement of light and air: *Paterson Ry. Co.* v. *Grundy*, 51 N. J. E. 213 (1893).

Nevertheless, "a privilege granted to a corporation of a partial use of the public highway, which threatens, if it does not encroach on the property rights of the adjacent owner, should be so exercised by the company as to minimize the inconvenience and danger to the enjoyment of such rights." If the wire can, without serious impairment of its usefulness, as well be hung in the middle of the street as on the curb line, it must be so hung: *Paterson Ry. Co.* v. *Grundy*, *supra*.

And the poles must be so placed as not to interfere with the rights of ingress and egress: *Detroit City Ry. Co.* v. *Mills*, 85 Mich. 634 (1891).

The vigorous dissenting opinion of McGrath, J., in the last named case, sets forth vividly the evils attendant upon the use of the trolley system. He strikes at the root of the whole matter by denying any distinction, except in degree, between horse and steam railways, and maintains, in the face of accumulated authority, that even a horse railway is an additional burthen upon the land, for which compensation ought to be made in proportion to the damage inflicted: See also *Craig* v. *Rochester City R. Co.*, 39 Barb. 494 (1862); Lewis on Eminent Domain, Chap. 5, § 124.

In *Chicago & C. Terminal Ry. Co.* v. *Sterling H. & E. C. Street Ry Co.*, 38 N. E. 604 (1894), the court intimated serious doubts of the wisdom and justice of the established rule as to street railways, but felt themselves constrained to follow the time honored doctrine.

Perhaps, so radical a position as that assumed by the dissenting judges, in *Detroit City Ry. Co.* v. *Mills*, is unnecessary, although those opinions are worthy the most careful consideration.

But, to admit in its entirety, the rule for which they con-

tend, would be to unsettle long established rights, and might well lead to a worse state than the first.

Rather, in the future, we may hope for decisions following out the lines suggested by the queries of the principal case; casting aside the unserviceable and hitherto unsuccessful attempt to define that variable article the "street railway;" and declaring that each case, as it arises, must stand upon its own facts, and that when *any* method of transportation, no matter what its form or name, is operated upon a highway, and interferes to any material degree with the legal rights of others—the public, the land-owners, or other railway companies—such interference must be compensated in damages.

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